

Award
FINRA Dispute Resolution Services

In the Matter of the Arbitration Between:

Claimants

Gerardo Alberto Brauer and
Reyna Reichert Guevara

Case Number: 19-03809

vs.

Respondents

UBS Financial Services,
Paul Campbell,
Bob McCann,
John McDermott, and
Katherine B. Carlburg

Hearing Site: Houston, Texas

Awards are rendered by independent arbitrators who are chosen by the parties to issue final, binding decisions. FINRA makes available an arbitration forum—pursuant to rules approved by the SEC—but has no part in deciding the award.

Nature of the Dispute: Customers vs. Member, Associated Persons, and Non-Member

This case was decided by a majority-public panel.

REPRESENTATION OF PARTIES

Claimants Gerardo Alberto Brauer and Reyna Reichert Guevara, hereinafter, collectively, referred to as “Claimants,” appeared pro se.

For UBS Financial Services a/k/a UBS Financial Services Inc. (“UBS”), Paul Campbell (“Campbell”), Bob McCann a/k/a Robert McCann (“McCann”), and John McDermott (“McDermott”), hereinafter, collectively, referred to as “Respondents”: Anthony J. Borrelli, Esq. and Hunt S. Ricker, Esq., Riker, Danzig, Scherer, Hyland & Perretti LLP, Morristown, New Jersey.

Respondent Katherine B. Carlburg (“Carlburg”) did not enter an appearance.

CASE INFORMATION

Statement of Claim filed on or about: January 14, 2020.

Claimants signed the Submission Agreement: January 10, 2020.

Statement of Answer filed by Respondents on or about: March 17, 2020.

UBS signed the Submission Agreement: January 30, 2020.

Campbell signed the Submission Agreement: March 16, 2020.

McCann signed the Submission Agreement: March 20, 2020.
McDermott signed the Submission Agreement: June 23, 2020.

Carlburg did not file a Statement of Claim or sign the Submission Agreement.

CASE SUMMARY

In the Statement of Claim, Claimants alleged that their investments were overconcentrated in high-risk double currency units, account statements were manipulated, and accounts were opened without their authorization.

Unless specifically admitted in the Statement of Answer, Respondents denied the allegations made in the Statement of Claim and asserted various affirmative defenses.

RELIEF REQUESTED

In the Statement of Claim, Claimants requested recovery of losses in the amount of \$386,965.40 or more and punitive damages of five times the amount lost.

In the Statement of Answer, Respondents requested an award dismissing the Statement of Claim in its entirety with prejudice, such other and further relief as the Panel deems just and proper, and expungement of all references to this matter from Campbell's registration records maintained by the Central Registration Depository ("CRD").

In the Final Hearing Brief, Respondents requested an award dismissing the Statement of Claim in its entirety with prejudice; reasonable attorneys' fees, incurred by Respondents from July 16, 2020 through the present, in the amount of \$98,785.00 pursuant to Rule 12212 of the Code of Arbitration Procedure ("Code") and the Tex. Civ. Prac. & Rem. Code § 10.004(c)(3); such other and further relief as the Panel deems just and proper; and expungement of all references to this matter from Campbell's registration records maintained by the CRD.

OTHER ISSUES CONSIDERED AND DECIDED

The Arbitrators acknowledge that they have each read the pleadings and other materials filed by the parties.

Carlburg is not a member or associated person of FINRA and did not voluntarily submit to arbitration. Therefore, the Panel made no determination with respect to the claims against Carlburg.

On June 9, 2020, Claimants filed a request for documents and sanctions ("Request for Documents and Sanctions"). On June 12, 2020, Claimants filed a supplement to the Request for Documents and Sanctions. On June 15, 2020, Claimants filed a second supplement to the Request for Documents and Sanctions. On June 17, 2020, Claimants filed a third supplement to the Request for Documents and Sanctions. On June 19, 2020, Respondents filed an Opposition to the Request for Documents and Sanctions and supplements ("Opposition to Request"). On June 24, 2020, Claimants filed a response to the Opposition to Request. In its Order dated July 16, 2020, the Panel denied the Request for Documents and Sanctions and provided a ruling on procedures.

On September 13, 2020, Claimants filed a request for sanctions (“Motion for Sanctions”), in which they requested \$5,000,000.00 in moral damages. On September 23, 2020, Respondents filed an Opposition to the Motion for Sanctions. On September 28, 2020, Claimants filed a Reply in Further Support of the Motion for Sanctions. On October 6, 2020 and October 13, 2020, Claimants filed additional correspondence in support of the Motion for Sanctions. In its Order dated October 12, 2020, the Panel denied the Motion for Sanctions.

On October 6, 2020, Claimants filed two Motions to Compel with requests for sanctions. On October 8, 2020, Claimants filed two additional Motions to Compel with requests for sanctions. On October 9, 2020, Claimants filed a fifth Motion to Compel with a request for sanctions. On October 16, 2020, Respondents filed a Response to the five Motions to Compel with requests for sanctions (“Motions to Compel and for Sanctions”). On October 24, 2020, Claimants filed a Reply in Further Support of the Motions to Compel and for Sanctions. In its Order dated November 6, 2020, the Panel denied the Motions to Compel and for Sanctions without prejudice.

On November 20, 2020, Respondents filed a Motion to Dismiss the Statement of Claim Based on Claimants’ Repeated Violations of FINRA Rules and Panel Orders (“Motion to Dismiss”) pursuant to Rules 12212 and 12511 of the Code, requesting sanctions against Claimants. On November 25, 2020, Claimants filed an Opposition to the Motion to Dismiss. On November 30, 2020, Respondents filed a Reply in Further Support of the Motion to Dismiss. On January 4, 2021, the Panel heard oral arguments on the Motion to Dismiss and other matters. On January 5, 2021, Claimants filed a response to Respondents’ oral arguments. In its Order dated January 7, 2021, the Panel noted Claimants’ repeated failures to comply with multiple Orders and warned Claimants’ that if they failed to comply with this Order their claims would be dismissed with prejudice and without further hearing. Accordingly, the Panel deferred its decision on the Motion to Dismiss.

On December 7, 2020, Claimants filed a request for removal of Respondents’ counsel and that Respondents be prohibited from admitting evidence, as sanctions against Respondents (“December Motion for Sanctions”). On December 11, 2020, Respondents filed an Opposition to the December Motion for Sanctions, in which they requested that the Panel grant the Motion to Dismiss due to Claimants’ failure to comply with Orders. On December 20, 2020, Claimants filed a Reply to the Opposition to the December Motion for Sanctions. In its Order dated January 16, 2021, the Panel noted Claimants’ continued failure to comply with the July 16, 2020 Order and denied the December Motion for Sanctions.

On January 10, 2021, Claimants filed a request for the Panel to decide the case on the parties’ written submissions (“Motion for Decision on Written Submissions”). On January 11, 2021, Claimants filed an amended Motion for Decision on Written Submissions (“Amended Motion for Decision on Written Submissions”). On January 17, 2021, Claimants filed a request for sanctions (“January Motion for Sanctions”) and a request to cancel the Motion for Decision on Written Submissions, the Amended Motion for Decision on Written Submissions, and any other pending motion (“Motion to Cancel”). On January 20, 2021, Respondents filed a response to the Motion for Decision on Written Submissions, the Amended Motion for Decision on Written Submissions, January Motion for Sanctions, and Motion to Cancel (“Opposition to January Motions”), in which they supported the Panel deciding the case on the parties’ written submissions but also requested that Claimants be sanctioned. Respondents further requested that the Motion to Dismiss be granted and that Claimants be ordered to pay Respondents’

attorneys' fees incurred after the July 16, 2020 Order. In its Order dated January 20, 2021, the Panel ruled that the Motion to Cancel was moot. On January 22, 2021, Claimants filed a Reply to the Opposition to January Motions. In its Order dated January 28, 2021, the Panel noted that Claimants continued to ignore the July 16, 2020 Order, denied the January Motion for Sanctions, and granted the request for a decision on the written submissions.

On February 2, 2021, Claimants filed a request to restart the arbitration process without prejudice ("Request to Restart") and an additional statement in support of the Request to Restart. On the same day, Claimants also filed a request for reconsideration of the January 28, 2021 Order ("Request for Reconsideration"). On February 8, 2021, Claimants filed a statement in support of the Request for Reconsideration. On the same day, Respondents filed an Opposition to the Request to Restart and Request for Reconsideration. In its Order dated February 10, 2021, the Panel denied the Request to Restart and Request for Reconsideration and reiterated its instructions for written final briefs.

On February 17, 2021, Claimants filed a request to submit additional documentation in response to Respondents' Final Hearing Brief ("Request to Supplement") and a statement in support of the Request to Supplement. On February 19, 2021, Respondents filed an Opposition to the Request to Supplement ("Opposition to Supplement"), in which they requested that Claimants be sanctioned. The same day, Claimants filed a reply to Respondents' Opposition to Supplement. On February 20, 2021, Claimants filed additional support for the Request to Supplement. On February 22, 2021, Claimants filed a request that the Panel take into consideration the exhibit attached thereto. The same day, Respondents filed a Reply, in further support of the Opposition to Supplement, in which they requested dismissal of Claimants' Statement of Claim with prejudice and expungement. They further requested attorneys' fees as a sanction against Claimants. On February 23, 2021, Claimants filed a request that the Panel take into consideration the exhibit attached thereto. On February 28, 2021, Claimants filed a corrected version of the February 23, 2021 request. On March 1, 2021, Claimants filed a request for consideration of newly acquired evidence. In its Order dated March 4, 2021, the Panel denied the Request to Supplement and the requests in Claimants' related filings.

On March 9, 2021, Claimants filed a request for reconsideration of the March 4, 2021 Order. In its March 11, 2021 Order, the Panel denied the request.

The Panel conducted a recorded, telephonic hearing on April 8, 2021, so the parties could present oral argument and evidence on Respondents' request for expungement.

Claimants participated in the expungement hearing and opposed the request for expungement.

The Panel reviewed Campbell's BrokerCheck® Report. The Panel noted that a prior arbitration panel or court has not previously ruled on expungement of the same occurrence in the CRD.

In recommending expungement, the Panel relied upon the following documentary or other evidence: Claimants' and Campbell's testimony, Campbell's BrokerCheck® Report, and the Exhibits to Respondents' Statement of Answer.

The Award in this matter may be executed in counterpart copies.

AWARD

After considering the pleadings, the testimony and evidence presented at the hearing, and any post-hearing submissions, the Panel has decided in full and final resolution of the issues submitted for determination as follows:

1. Claimants' claims are denied in their entirety.
2. Claimants are jointly and severally liable for and shall pay to Respondents the sum of \$98,785.00 in attorneys' fees pursuant to Rule 12212 of the Code and the Tex. Civ. Prac. & Rem. Code § 10.004(c)(3).
3. The Panel recommends the expungement of all references to the above-captioned arbitration (Occurrence Number 2062773) from registration records maintained by the CRD for Respondent Paul David Campbell (CRD Number 4403948) with the understanding that, pursuant to Notice to Members 04-16, Respondent Paul David Campbell must obtain confirmation from a court of competent jurisdiction before the CRD will execute the expungement directive.

Unless specifically waived in writing by FINRA, parties seeking judicial confirmation of an arbitration award containing expungement relief must name FINRA as an additional party and serve FINRA with all appropriate documents.

Pursuant to Rule 12805 of the Code, the Panel has made the following Rule 2080 affirmative finding of fact:

The claim, allegation, or information is false.

The Panel has made the above Rule 2080 finding based on the following reasons:

While Claimants are unhappy with alleged losses in their accounts, they failed to put forth any credible evidence in support of their claims. The preponderance of credible testimony and documentary evidence demonstrated that the claims are false. Claimants approved the transactions and the investments performed as they were designed to perform. Claimants' losses were the result of market conditions, and the evidence did not show any wrongdoing by Campbell.

4. Any and all claims for relief not specifically addressed herein, including any requests for punitive damages and treble damages, are denied.

FEES

Pursuant to the Code, the following fees are assessed:

Filing Fees

FINRA Dispute Resolution Services assessed a filing fee* for each claim:

Initial Claim Filing Fee = \$ 2,000.00

**The filing fee is made up of a non-refundable and a refundable portion.*

FINRA Dispute Resolution Services previously deferred Claimants' filing fee of \$ 2,000.00. Upon conclusion of the matter, the Panel determined to assess the non-refundable portion of the filing fee in the amount of \$600.00.

Member Fees

Member fees are assessed to each member firm that is a party in these proceedings or to the member firm(s) that employed the associated person(s) at the time of the event(s) giving rise to the dispute. Accordingly, as a party, UBS is assessed the following:

Member Surcharge = \$ 3,025.00
Member Process Fee = \$ 6,175.00

Discovery-Related Motion Fees

Fees apply for each decision rendered on a discovery-related motion.

Two (2) decisions on discovery-related motions on the papers with one (1) Arbitrator @ \$200.00/decision = \$ 400.00

Thirteen (13) decisions on discovery-related motions on the papers with the Panel @ \$600.00/decision = \$ 7,800.00

Claimants submitted thirteen (13) discovery-related motions
Respondents submitted two (2) discovery-related motions

Total Discovery-Related Motion Fees = \$ 8,200.00

The Panel has assessed \$6,100.00 of the discovery-related motion fees, jointly and severally, to Claimants.

The Panel has assessed \$2,100.00 of the discovery-related motion fees, jointly and severally, to Respondents.

Hearing Session Fees and Assessments

The Panel has assessed hearing session fees for each session conducted. A session is any meeting between the parties and the Arbitrator(s), including a pre-hearing conference with the Arbitrator(s), which lasts four (4) hours or less. Fees associated with these proceedings are:

Three (3) pre-hearing sessions with the Panel @ \$1,400.00/session = \$ 4,200.00
Pre-Hearing Conferences: May 8, 2020 1 session
September 2, 2020 1 session
January 4, 2021 1 session

Decision on the papers: = \$ 300.00

Two (2) hearing sessions on expungement request @ \$1,400.00/session	= \$	2,800.00
Hearing: April 8, 2021 2 sessions		
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Total Hearing Session Fees	= \$	7,300.00

The Panel has assessed \$3,650.00 of the hearing session fees, jointly and severally, to Claimants.

The Panel has assessed \$850.00 of the hearing session fees, jointly and severally, to Respondents.

The Panel has assessed \$2,800.00 of the hearing session fees to Campbell.

All balances are payable to FINRA Dispute Resolution Services and are due upon receipt.

ARBITRATION PANEL

G. Maynard Green	-	Public Arbitrator, Presiding Chairperson
Thomas A. Cipolla	-	Public Arbitrator
Robin Pacholder	-	Non-Public Arbitrator

I, the undersigned Arbitrator, do hereby affirm that I am the individual described herein and who executed this instrument, which is my award.

Concurring Arbitrators' Signatures

G. Maynard Green

G. Maynard Green
Public Arbitrator, Presiding Chairperson

05/27/2021

Signature Date

Thomas A. Cipolla

Thomas A. Cipolla
Public Arbitrator

05/27/2021

Signature Date

Robin Pacholder

Robin Pacholder
Non-Public Arbitrator

05/27/2021

Signature Date

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May 27, 2021

Date of Service (For FINRA Dispute Resolution Services use only)